

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10742 of 2002

Date of Decision: 23-09-2004

UNION OF INDIA

Versus

V.K. RAJGURU

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K. Rathod, Judge

Whether approved for reporting?

For the Petitioners:

MRS VASAVDATTA BHATT

MR KK SHAH

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. This Special Civil Application is directed
against the judgment of Central Administrative Tribunal

Whether Reporters of Local Papers may be allowed to see the Judgment?

2. Shortly stated, respondent was Clerk-in-Charge at Harmaria Railway Station in Bhavnagar Division. He was charge-sheeted on 23-01-1991 under Rule 3, Sub Rule 1 of the Railway Servant (Service & Conduct) Rules, 1966, for allegation that while working as CIS/HRM during 1990 he booked the forest material to various destinations in false and fabricated names, thereby infringing provisions of Indian Forest Act. The respondent represented against the charge-sheet and enquiry officer was appointed. Enquiry was conducted ex-parte in the absence of respondent and inquiry officer furnished the report to the disciplinary authority for taking appropriate decision in the matter on the basis of material annexed with it. During inquiry proceedings respondent was called upon to appear and defend himself. Petitioners submit that despite repeated communications, respondent did not appear, while case of the respondent is that he could not be relieved in the absence of a reliever, therefore, he could not appear before the inquiry officer. This defence has substance since respondent had communicated this fact to his superiors. Therefore, his absence was not without justification. Petitioners should have created the situation for the respondent to attend the inquiry by relieving him. This means, the respondent could not defend himself because he was not extended adequate opportunity to do so, therefore, violation of principles of natural justice is writ large in this case. Further, even if inquiry officer proceeded ex-parte, he must have evidence to connect the delinquent with the charge. Thereafter, he has to file the report recording reasons in support of the charges. He did not do so in this case, rather, sent the material to the disciplinary authority for deciding the case on the material available with the case. It is pertinent to record that during the inquiry, the inquiry officer did not record any evidence. In substance, there is no inquiry, therefore, the disciplinary authority ought to have considered this fundamental defect in holding of inquiry and taken steps to cure the same by remanding the case to the inquiry officer, to hold the inquiry in accordance with law, giving the respondent adequate opportunity to defend himself. Instead of taking this course, he concludes that case against the petitioner stood proved on the basis of material, which had been furnished to it by the officer and inflicted punishment

of removal from service on the respondent.

3. CAT has considered the case and rightly set aside the punishment. Since the inquiry officer has taken long time, CAT did not allow holding of inquiry as the instance was of 1990. Consequently, we find no infirmity in the order of CAT quashing the inquiry and disallowing fresh inquiry in the matter.

4. Next question pressed for consideration is whether the respondent is entitled to salary from the date of dismissal to the date of reinstatement. Smt. Vasavdatta Bhatt submits that the respondent is not entitled to salary for this period since he did not work, while Shri K.K.Shah submits that he did not work because he was not allowed to work, and since removal has been set aside, respondent is entitled to salary for this period. Having considered this aspect of the matter, we are of the considered opinion that respondent is entitled to salary from the date of removal (08-04-1992) to the date of reinstatement (08-02-2002). The inquiry has not been held in accordance with law and principles of natural justice. The petitioners are responsible for holding this kind of inquiry wherein nothing is proved, matter has not proceeded in accordance with law, nor the respondent was extended reasonable opportunity to defend himself. These facts are duly stated in the preceding part of the judgment. After the removal, appeal is filed, thereafter final order is challenged before CAT by the respondent, who did not cause any kind of delay in prosecuting the matter, therefore, not responsible for the delay. (See Union of India v. Madhusudan Prasad ((2004) 1 SCC 43) and Union of India and others v. Hasmukh P. Rajada (2004 (2) GLR 921).

5. Consequently, there is no merit in the petition and the same is dismissed. Rule is discharged.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K. RATHOD)
JUDGE

[sndevu]
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